

CONFERENCE COMMITTEE REPORT DIGEST FOR EHB 1266

Citations Affected: IC 4-13-17; IC 5-21-3-1; IC 5-22.

Synopsis: Reverse auctions. Authorizes the department of administration to establish Internet sites designed to facilitate state public purchasing. Requires the department of administration to establish rules and fees for the use of Internet purchasing sites in cooperation with the intelnet commission and the state board of accounts. Permits a purchasing agency to conduct online reverse auctions for purchases of supplies. Establishes procedures governing the conduct of an online reverse auction. **(This conference committee report restores the ability of state agencies to use Internet purchasing sites for purchasing; makes the participation of political subdivisions in the state's Internet's purchasing site optional; and provides that certain construction equipment cannot be purchased through an Internet auction.)**

Effective: Upon passage; July 1, 2004.

Adopted

Rejected

CONFERENCE COMMITTEE REPORT

MR. SPEAKER:

Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed Senate Amendments to Engrossed House Bill No. 1266 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 4-13-17 IS ADDED TO THE INDIANA CODE AS
- 3 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1,
- 4 2004]:
- 5 **Chapter 17. Internet Purchasing Sites**
- 6 **Sec. 1. As used in this chapter, "department" refers to the**
- 7 **Indiana department of administration established by IC 4-13-1-2.**
- 8 **Sec. 2. As used in this chapter, "Internet purchasing site"**
- 9 **means an open and interactive electronic environment that is:**
- 10 **(1) designed to facilitate the purchase and sale of supplies**
- 11 **conducted under IC 5-22;**
- 12 **(2) approved and managed by the department; and**
- 13 **(3) linked to the electronic gateway administered by the**
- 14 **intelenet commission established by IC 5-21-2-1.**
- 15 **Sec. 3. As used in this chapter, "purchasing agency" has the**
- 16 **meaning set forth in IC 5-22-2-25.**
- 17 **Sec. 4. The department may adopt rules under IC 4-22-2 to**

1 establish the following:

2 (1) Procedures for the use of Internet purchasing sites to
3 facilitate the purchase of supplies or sales conducted under
4 IC 5-22 by a state agency. The rules may permit use of an
5 Internet purchasing site to facilitate purchases of supplies and
6 sales conducted by any of the following if considered beneficial
7 by the department:

8 (A) A purchasing agency other than a state agency.

9 (B) A cooperative purchasing organization described in
10 IC 5-22-4-7.

11 (C) The public.

12 (2) User fees payable by either of the following:

13 (A) A bidder using an Internet purchasing site.

14 (B) Entities other than state agencies that use the Internet
15 purchasing site permitted under subdivision (1).

16 (3) The technical requirements for operation of an Internet
17 purchasing site.

18 (4) Procedures requiring the proper officers to maintain
19 adequate documentation of transactions performed through
20 the Internet purchasing site so that the officers may be
21 audited as provided by law.

22 (5) Procedures necessary for the operation of Internet
23 purchasing sites.

24 Sec. 5. An Internet purchasing site must do all the following:

25 (1) Provide an authorized user with the ability to issue an
26 invitation for bids for supplies electronically.

27 (2) Protect the content of an electronic offer to the extent
28 required under IC 5-22.

29 (3) Provide an authorized user with a secure, accurate report
30 of all information contained in electronic offers made through
31 the site on or before the deadline established by the
32 authorized user.

33 (4) Comply with IC 5-22.

34 Sec. 6. The department shall provide the equipment and
35 information technology services necessary to operate the Internet
36 purchasing sites required under this chapter.

37 Sec. 7. The department shall provide authorized users and the
38 public with access to Internet purchasing sites by links to the
39 electronic gateway administered by the intelnet commission.

40 Sec. 8. The following shall cooperate with the department to
41 implement this chapter:

42 (1) The intelnet commission.

43 (2) The state board of accounts.

44 (3) The attorney general.

45 (4) The auditor of state.

46 SECTION 2. IC 5-21-1-6.5 IS ADDED TO THE INDIANA CODE
47 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY

1, 2004]: **Sec. 6.5. "Internet purchasing site" has the meaning set forth in IC 4-13-17-2.**

SECTION 3. IC 5-21-3-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. The commission shall design, develop, contract for, and manage statewide, integrated telecommunication networks and information technology services that economically, efficiently, and effectively meet the needs of authorized users. When technically possible and cost efficient, the system shall use facilities of the certificated local exchange telephone companies. The intelenet system may include the following:

- (1) A statewide voice network.
- (2) Voice connections into each county in the state.
- (3) Interfacing with out-of-state voice facilities.
- (4) Lines to connect computers and terminals.
- (5) High speed data switching capacity.
- (6) Data connections into each county in the state.
- (7) A statewide broadcast network for video signals.
- (8) Two-way video conferencing capacity.
- (9) **Internet purchasing sites.**
- (10) Other telecommunication and information technology services approved by the commission.

The commission shall provide the intelenet system and accessIndiana solely to carry out or to facilitate the carrying out of the essential public, educational, and governmental functions of authorized users.

SECTION 4. IC 5-22-2-13.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 13.5. "Internet" means the international computer network of both federal and nonfederal interoperable packet switched data networks, including the graphical subnetwork called the world wide web.**

SECTION 5. IC 5-22-2-13.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 13.7. "Internet purchasing site" means an open and interactive electronic environment that is designed to facilitate the purchase of supplies by means of the Internet. The term includes an Internet purchasing site developed under IC 4-13-17.**

SECTION 6. IC 5-22-2-28.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 28.5. "Reverse auction" means a method of purchasing in which offerors submit offers in an open and interactive environment through the Internet.**

SECTION 7. IC 5-22-3-4, AS AMENDED BY P.L.1-2003, SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 4. (a) Whenever this article requires that notice or other material be sent by mail, the material may be sent by electronic means as stated in any of the following:

- (1) Rules adopted by the governmental body.
- (2) Written policies of the purchasing agency.

- 1 (3) A solicitation.
- 2 (b) Rules, written policies, and solicitation statements described in
- 3 subsection (a):
- 4 (1) are subject to this article; and
- 5 (2) must provide that the transmission of information is at least as
- 6 efficient and secure as sending the material by mail.
- 7 (c) A governmental body may receive electronic offers if both of the
- 8 following apply:
- 9 (1) The solicitation indicates the procedure for transmitting the
- 10 electronic offer to the governmental body.
- 11 (2) The governmental body receives the offer on a fax machine, by
- 12 electronic mail, or by means of another electronic system that has
- 13 a security feature that protects the content of an electronic offer
- 14 with the same degree of protection as the content of an offer that
- 15 is not transmitted by electronic means.
- 16 **(d) A governmental body conducting a reverse auction must**
- 17 **receive electronic offers for supplies through an Internet**
- 18 **purchasing site.**
- 19 SECTION 8. IC 5-22-7-5, AS AMENDED BY P.L.31-2002,
- 20 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 21 UPON PASSAGE]: Sec. 5. (a) The purchasing agency shall give notice
- 22 of the invitation for bids in the manner required by IC 5-3-1.
- 23 (b) The purchasing agency for a state agency shall also provide
- 24 electronic access to the notice through the electronic gateway
- 25 administered by the intelnet commission.
- 26 (c) The purchasing agency for a political subdivision may also
- 27 provide electronic access to the notice through:
- 28 (1) the electronic gateway administered by the intelnet commission
- 29 as determined by the commission; **or**
- 30 (2) **any other electronic means available to the political**
- 31 **subdivision.**
- 32 SECTION 9. IC 5-22-7.5 IS ADDED TO THE INDIANA CODE AS
- 33 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1,
- 34 2004]:
- 35 **Chapter 7.5. Online Reverse Auctions**
- 36 **Sec. 1. (a) A purchasing agency may conduct a reverse auction**
- 37 **for the purchase of supplies by using an Internet purchasing site**
- 38 **to:**
- 39 (1) **issue an invitation for bids; and**
- 40 (2) **receive bids.**
- 41 (b) **Except as provided in this chapter, a purchasing agency and**
- 42 **a bidder must comply with the requirements of this article when**
- 43 **participating in a reverse auction.**
- 44 **Sec. 2. (a) Before conducting a reverse auction, the purchasing**
- 45 **agency must adopt written policies that do the following:**
- 46 (1) **Establish procedures for all the following:**
- 47 (A) **Transmitting notices, solicitations, and specifications.**
- 48 (B) **Receiving offers.**

(C) Making payments.

(D) Protecting:

(i) the identity of an offeror; and

(ii) the amount of an offer until the time fixed for the opening of offers.

(E) For a reverse auction, providing for the display of the amount of each offer previously submitted for public viewing.

(F) Establishing the deadline by which offers must be received and will be considered to be open and available for public inspection.

(G) Establishing the procedure for the opening of offers.

(2) Require the purchasing agency to maintain adequate documentation regarding reverse auctions so that the transactions may be audited as provided by law.

(b) Written policies that comply with rules for an Internet public purchasing site adopted by the Indiana department of administration under IC 4-13-17-4 satisfy the requirements of this section.

Sec. 3. If a purchasing agency issues an invitation for bids using a reverse auction conducted through an Internet purchasing site under this chapter, only bids made:

(1) in accordance with the policies described in section 2 of this chapter; and

(2) through the Internet purchasing site; may be evaluated by the purchasing entity at the close of bidding.

Sec. 4. When used for a reverse auction, an Internet purchasing site must do the following:

(1) Provide information that the purchasing entity considers necessary or beneficial to potential bidders.

(2) Display the amount of all bids previously submitted regarding the reverse auction for public viewing.

(3) Conceal information that identifies a bidder.

(4) Comply with this article.

Sec. 5. The purchasing agency may charge a bidder in a reverse auction a fee set in the written policies adopted under section 2 of this chapter.

Sec. 6. For purposes of IC 5-22-7-6, a bid made through an Internet purchasing site is considered to be opened when a computer generated record of the information contained in all bids for a proposed purchase that were received by the site not later than the posted bid deadline is reviewed publicly by the purchasing agency in the presence of one (1) or more witnesses at the time and place designated in the invitation for bids.

Sec. 7. IC 5-22-16-6(a)(2) does not apply to a reverse auction.

Sec. 8. (a) As used in this section, "construction equipment" means equipment used in construction work, the unit price of

1 **which is greater than ten thousand dollars (\$10,000).**

2 **(b) A purchasing agency may not use a reverse auction to**
3 **purchase construction equipment.**

4 **SECTION 10. [EFFECTIVE UPON PASSAGE] (a) The definitions**
5 **set forth in IC 4-13-17, as added by this act, apply throughout this**
6 **SECTION.**

7 **(b) Notwithstanding IC 4-13-17, as added by this act, the Indiana**
8 **department of administration shall:**

9 **(1) carry out the duties imposed upon it under IC 4-13-17, as**
10 **added by this act, under interim written guidelines approved**
11 **by the department; and**

12 **(2) provide access to Internet purchasing sites for the**
13 **purposes of IC 4-13-17, as added by this act, before January**
14 **1, 2005.**

15 **(c) This SECTION expires January 1, 2005.**

16 **SECTION 11. An emergency is declared for this act.**

17 Renumber all SECTIONS consecutively.

(Reference is to EHB 1266 as printed February 17, 2004.)

Conference Committee Report
on
Engrossed House Bill 1266

Signed by:

Representative Hasler
Chairperson

Senator Riegsecker

Representative Ayres

Senator Broden

House Conferees

Senate Conferees